

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

AESTHETIC ASSOCIATES, INC.,  
P.S.;

Plaintiff,

vs.

EYECARE SPECIALISTS MEDICAL  
GROUP, INC. DBA ATLANTIS  
EYECARE; EHSAN SADRI MD,  
Defendants.

Case No. SACV 13-cv-01693-DOC  
(RNBx)

~~PROPOSED~~  
STIPULATED PROTECTIVE ORDER

GOOD CAUSE STATEMENT

WHEREAS, plaintiff AESTHETIC ASSOCIATES, INC., P.S. ("Plaintiff"), on the one hand, and defendants EYECARE SPECIALISTS MEDICAL GROUP, INC. DBA ATLANTIS EYECARE ("Atlantis") and EHSAN SADRI, M.D. ("Dr. Sadri"), on the other hand (hereinafter, Atlantis and Dr. Sadri sometimes collectively referred to as the "Defendant Parties"; and Plaintiff and the Defendant Parties sometimes individually referred to as a "Party" or collectively referred to as "the Parties"), each agree that discovery in this action may involve disclosure of certain confidential, trade secret, sensitive or proprietary business information about the Parties, their

1 respective patients, and/or their respective businesses; and

2 WHEREAS, the Parties are in a competitive business  
3 environment, and do not wish to disclose to each other  
4 confidential, trade secret, sensitive or proprietary business  
5 information (as defined below) without a protective order; and

6 WHEREAS, the unprotected disclosure of such confidential,  
7 trade secret, sensitive or proprietary business information could  
8 cause serious injury and damage to the Parties and/or intrude on  
9 the privacy rights of their respective patients;

10 NOW, THEREFORE, subject to and conditional upon the  
11 Court's approval of this Stipulated Protective Order, the Parties  
12 hereby stipulate through their respective counsel of record as set  
13 forth below that discovery in this matter shall be had pursuant to  
14 the following Stipulated Protective Order:

15 1. DEFINITIONS

16 1.1. As used herein, the phrase "Confidential  
17 Information" means and includes both "CONFIDENTIAL" and "ATTORNEYS'  
18 EYES ONLY" designated information and documents, as defined below.

19 1.2. As used herein, the designation  
20 "CONFIDENTIAL" means and applies to: (a) any patient, medical or  
21 billing information, medical records or reports, patient files,  
22 lists or identifying information, proprietary business information,  
23 financial information, credit card information, cost information,  
24 supplier lists and information, price lists or pricing information,  
25 sales records, invoices and summaries, payment information, checks  
26 and bank records, corporate minutes and resolutions, purchase  
27 orders, shipping documents, product designs, drawings,  
28 specifications and schematics, original product research,

1 development, manufacturing and production information, information  
2 regarding websites and their development, optimization and  
3 maintenance, internal computer data, metadata and access data,  
4 which are not generally known and which the producing Party has not  
5 made public; (b) as set forth in California Civil Code section  
6 3426.1, which is incorporated herein by this reference,<sup>1</sup> any  
7 information, document or thing produced in discovery which contains  
8 trade secrets of the producing Party; (c) any data derived from  
9 such information, documents or things, including any summaries,  
10 compilations, quotes, or paraphrases thereof; and/or (d) any other  
11 sensitive commercial or personal information having a similar  
12 degree of confidentiality and value to the producing Party similar  
13 to that of the foregoing (excluding information covered by the  
14 attorney-client privilege or attorney work product doctrine).

15 1.3. As used herein, the designation "ATTORNEYS'  
16 EYES ONLY" means and applies to: (a) any type of confidential,  
17 proprietary or trade secret information, document, or thing that is  
18 "CONFIDENTIAL" as defined above, which also includes non-public ,  
19 extremely sensitive or proprietary or other highly confidential  
20 business, financial or strategic information, that the disclosing  
21 Party in good faith reasonably believes would create a substantial  
22 risk of competitive or business injury to the disclosing Party if  
23 disclosed to a competitor or a person who the disclosing Party

24 <sup>1</sup> As defined in California Civil Code section 3426.1(d), trade  
25 secrets means information, including without limitation, a formula,  
26 pattern, compilation, program, device, method, technique, or  
27 process, that: (1) derives independent economic value, actual or  
28 potential, from not being generally known to the public or to other  
persons who can obtain economic value from its disclosure or use;  
and (2) is the subject of efforts that are reasonable under the  
circumstances to maintain its secrecy.

1 reasonably believes to have interests that are aligned with a  
2 competitor; and (b) any data derived from such information,  
3 document or thing, including any summaries, compilations, quotes,  
4 or paraphrases thereof.

5           1.4. As used herein, the terms "document" or  
6 "documents" mean and include, but are not limited to,  
7 correspondence, e-mail and other communications, records, exhibits,  
8 reports, samples, transcripts, video or audio recordings, disks,  
9 affidavits, briefs, pleadings, summaries, notes, abstracts,  
10 drawings, company records and reports, answers to interrogatories,  
11 responses to requests for admissions or document requests, and  
12 motions, including copies or computer-stored versions of any of the  
13 foregoing, as well as anything meeting the definition of a  
14 "writing" as used in California Evidence Code section 250.

15           2. DESIGNATION OF CONFIDENTIAL INFORMATION

16           2.1. This Stipulated Protective Order applies to  
17 all discovery responses in this case, and to any other documents or  
18 materials containing CONFIDENTIAL or ATTORNEYS' EYES ONLY  
19 information disclosed in this action that are designated by a Party  
20 or a third party as such hereunder, as defined above, as well as to  
21 any documents or materials containing CONFIDENTIAL or ATTORNEYS'  
22 EYES ONLY information disclosed in this action by way of motion,  
23 order of the Court, in response to questions in deposition, written  
24 interrogatories, requests for admission, requests for the  
25 production of documents and other tangible things, subpoenas, or  
26 any other discovery undertaken in this action.

27           2.2. Any Party or third party as provided for  
28 herein may designate Confidential Information as CONFIDENTIAL or

1 ATTORNEYS' EYES ONLY, as defined above, prior to or at the time of  
2 disclosure by that Party or a third party. Such designation shall  
3 be made by placing the appropriate designation on every page of  
4 each document so designated. In the case of information disclosed  
5 in or by a non-paper medium (e.g., videotape, audiotape, digital  
6 video disc, compact disc, USB flash drive, computer disk, external  
7 hard drive or other tangible thing), the appropriate designation  
8 shall be affixed to the outside of the medium or its container so  
9 as to clearly give notice of the designation. Such designation is  
10 deemed to apply both to the document or other material itself and  
11 to the Confidential Information contained therein or thereon.

12 2.3. Confidential Information shall be used only  
13 for the purposes of this litigation and may not be used by any  
14 Party to which or to whom that information is produced or disclosed  
15 for any other purpose.

16 2.4. The Parties and their attorneys shall use  
17 reasonable care and diligence to avoid designating any documents or  
18 materials as CONFIDENTIAL or ATTORNEYS' EYES ONLY that are not  
19 entitled to such designation. The designating Party bears the  
20 burden of proof to support the protections afforded under this  
21 Stipulated Protective Order.

22 2.5. Each of the Parties to this Stipulated  
23 Protective Order expressly agrees and covenants that it will not  
24 disclose or cause the disclosure of any Confidential Information in  
25 violation of this Stipulated Protective Order, and that it will  
26 take appropriate steps to secure and safeguard all Confidential  
27 Information in its possession, along with any copies, summaries,  
28 excerpts, abstracts, or other information derived in whole or in

1 part therefrom.

2                   2.6. Third parties may avail themselves of the  
3 protections of this Stipulated Protective Order by: (a) executing a  
4 nondisclosure agreement in the form attached hereto as Attachment  
5 "A" and serving a copy thereof on all counsel of record herein, or  
6 (b) by orally agreeing to be bound by the terms hereof if such oral  
7 agreement is made on the record during a deposition, which shall  
8 also be read into the record of such deposition, and by thereafter  
9 producing documents and/or giving testimony in accordance with this  
10 Stipulated Protective Order.

11                   3. DEPOSITIONS

12                   3.1. With respect to the examination of witnesses  
13 upon oral deposition, when Confidential Information is supplied to  
14 the deponent, or when the deponent's testimony contains, reflects,  
15 or comments on Confidential Information, the deposition reporter  
16 and/or video operator shall be informed of this Stipulated  
17 Protective Order by the Party or third party seeking to invoke its  
18 protection and provided a copy hereof, and will be required to  
19 agree to be bound by its terms in accordance with Paragraph 2.6.  
20 If deposition testimony is designated as CONFIDENTIAL or ATTORNEYS'  
21 EYES ONLY at a deposition, the portion of the testimony so  
22 designated shall be bound in a separate transcript and/or recorded  
23 on a separate video device such as videotape, digital video disc or  
24 similar recording device (collectively, "video"), if the deposition  
25 is video recorded. The reporter and/or video operator shall then  
26 place on the cover of any such separate transcript or video the  
27 words "CONTAINS CONFIDENTIAL INFORMATION" or "CONTAINS ATTORNEYS'  
28 EYES ONLY INFORMATION," as appropriate. Counsel for the Parties

1 shall then take appropriate steps to prevent such separate  
2 transcript or video so designated from being disclosed to any  
3 person, except as provided in this Stipulated Protective Order.  
4 The Party taking any deposition shall be responsible for ensuring  
5 that the court reporter and/or video operator are informed of this  
6 Stipulated Protective Order and have agreed to comply with and be  
7 bound by its terms.

8           3.2. If Confidential Information is to be  
9 discussed or disclosed in a deposition, any Party or third party  
10 claiming such confidentiality may exclude from the room any person  
11 who is not entitled to receive such Confidential Information  
12 pursuant to the terms of this Stipulated Protective Order during  
13 that portion of the deposition in which the Confidential  
14 Information is actually discussed or disclosed.

15           3.3. Nothing herein shall preclude a Party from  
16 showing any deponent in this action documents or other materials  
17 designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY if said deponent  
18 was the author, sender, or a recipient of such documents or other  
19 materials or can otherwise be demonstrated to have had prior access  
20 to or receipt of such documents or materials or the information  
21 contained therein. Regardless of designation pursuant to this  
22 Stipulated Protective Order, if a document or testimony makes  
23 reference to the actual or alleged conduct or statements of a  
24 person who is a potential witness in this action, counsel may  
25 discuss such conduct or statements with such witness without  
26 revealing any portion of the document or testimony other than that  
27 which specifically refers to such conduct or statement, and such  
28 discussion shall not constitute disclosure within the terms of

1 Paragraph 5 below.

2 4. DEPONENTS AND THIRD PARTY WITNESSES BOUND BY THIS  
3 STIPULATED PROTECTIVE ORDER

4 4.1. Each deponent or third party witness to whom  
5 any Party proposes to disclose Confidential Information at a  
6 deposition, trial, or other proceeding shall first be given a copy  
7 of this Stipulated Protective Order and informed of its contents;  
8 shall agree to be bound by the obligations of confidentiality and  
9 nondisclosure as set forth in this Stipulated Protective Order; and  
10 shall either (a) execute a nondisclosure agreement in the form  
11 attached hereto as Attachment "A", or (b) orally agree, if such  
12 oral agreement is made on the record during a deposition, to be  
13 bound by its terms, which shall also be read into the record.

14 5. ACCESS TO CONFIDENTIAL INFORMATION

15 5.1. All Confidential Information shall be  
16 maintained in confidence and shall not be disclosed, directly or  
17 indirectly, to any person or entity except as provided in this  
18 Stipulated Protective Order.

19 5.2. Access to Confidential Information designated  
20 ATTORNEYS' EYES ONLY shall be limited to the following "Qualified  
21 Persons":

22 5.2.1. Outside counsel of record for the  
23 Parties, their employees and staff, and outside vendors engaged in,  
24 and used solely for, simple reproduction or copying.

25 5.2.2. Consultants and experts requested by  
26 the Parties or their counsel to furnish expert or litigation  
27 support services in this litigation, provided that such consultants  
28 or experts fulfill the conditions in paragraph 5.5 below, and



1 provided that the name and employment affiliations of the  
2 consultants or experts are provided to the disclosing Party's  
3 counsel at least ten (10) days in advance of any disclosure of that  
4 Party's confidential information, so that counsel for the  
5 disclosing Party may have an opportunity to object to the Court  
6 prior to such disclosure, in which case such disclosure shall not  
7 occur pending resolution by the Parties or the Court.

8                   5.2.3. The Court and its authorized  
9 personnel, pursuant to paragraphs 7.1 below.

10                   5.3. Access to and/or disclosure of information  
11 designated as CONFIDENTIAL shall be limited to the following  
12 "Qualified Persons":

13                   5.3.1. Those persons or entities considered  
14 "Qualified Persons" under paragraph 5.2.

15                   5.3.2. The Parties to this case, and their  
16 officers, directors, agents and employees whom counsel of record  
17 believes in good faith have a need for access to such information  
18 for the preparation and trial of this action.

19                   5.3.3. Deponents, so long as the conditions  
20 of Paragraphs 3.1, 3.3 and 4.1 above are met.

21                   5.4. No Confidential Information received by any  
22 Party or counsel in this lawsuit may be revealed or disclosed to  
23 any person or entity not described above.

24                   5.5. Each consultant or expert authorized pursuant  
25 to Paragraph 5.2.2, shall, prior to being given access to  
26 Confidential Information, acknowledge in writing his or her  
27 familiarity with the terms of this Stipulated Protective Order and  
28 execute a nondisclosure agreement in the form specified in

1 Attachment "A" hereto.

2 6. PARTY'S OWN INFORMATION

3 6.1. Nothing in this Stipulated Protective Order  
4 shall affect the right of the designating Party to disclose to its  
5 own officers, directors, employees, agents, consultants or experts,  
6 or to any other person, Confidential Information designated by it.

7 7. FILING OR LODGING UNDER SEAL, AND OTHER USE

8 7.1. In accordance with Local Rule 79-5.1, if any  
9 papers to be filed with the Court contain information and/or  
10 documents that have been designated as "Confidential" or  
11 "Attorneys' Eyes Only," the proposed filing shall be accompanied by  
12 an application to file the papers or the portion thereof containing  
13 the designated information or documents (if such portion is  
14 segregable) under seal; and the application shall be directed to  
15 the judge to whom the papers are directed. For motions, the parties  
16 shall publicly file a redacted version of the motion and supporting  
17 papers.

18 8. CHALLENGING A DESIGNATION

19 8.1. In the event that counsel of record for any  
20 Party at any time believes that designated Confidential Information  
21 should not be so designated, or that a different designation should  
22 be employed, and prior to the filing of any motion relating to any  
23 dispute over such designation, counsel for the Parties shall confer  
24 in a good faith effort to eliminate the necessity for a hearing or  
25 to eliminate as many of the disputes as possible. It shall be the  
26 responsibility of counsel for the moving party to arrange this  
27 conference. Such counsel shall so notify counsel for the  
28 designating Party in writing which notice shall identify each

1 issue, shall state briefly with respect to each such issue the  
2 moving party's position (and provide any legal authority which the  
3 moving party believes is dispositive of the dispute as to that  
4 issue), and specify the terms of the designation or discovery order  
5 to be sought. Counsel of record for both the complaining and  
6 designating Parties then shall meet and confer in good faith  
7 concerning such disputed Confidential Information within ten (10)  
8 days of receipt of the notice. If agreement is not reached within  
9 those ten (10) days, counsel may then file an appropriate motion  
10 with the Court challenging the designation. Any such motion,  
11 however, will need to be made in strict compliance with Local Rules  
12 37-1 and 37-2 (including the Joint Stipulation requirement). Upon  
13 such motion, the designating Party bears the burden of proof to  
14 support the designation. The designated Confidential Information  
15 shall be subject to and protected by this Stipulated Protective  
16 Order under the designation assigned by the designating Party until  
17 the Court has ruled on any such motion.

18 8.2. No Party shall be obliged to challenge the  
19 propriety of a confidential designation at any specified time, and  
20 a failure to do so shall not preclude a subsequent attack on the  
21 propriety of such designation.

22 9. INADVERTENT DISCLOSURE

23 9.1. The inadvertent failure to designate  
24 Confidential Information properly (or at all) in accordance with  
25 this Stipulated Protective Order prior to or at the time of  
26 disclosure shall not operate as a waiver of a Party's right to  
27 thereafter designate such information as confidential within thirty  
28 (30) days after such disclosure or after actual notice of such

1 disclosure, whichever is later.

2           9.2. In the event that Confidential Information is  
3 designated as confidential after disclosure, but within the thirty  
4 (30) day period allowed under Paragraph 9.1, all receiving Parties  
5 shall employ reasonable efforts to ensure that all inadvertently  
6 disclosed information is subsequently treated as confidential  
7 pursuant to the terms of this Stipulated Protective Order.

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9           9.3 If a Party inadvertently produces material  
10 that it considers to be protected by the attorney-client privilege,  
11 the work product doctrine or any other privileges or doctrines of  
12 similar effect, in whole or in part, the Producing Party may  
13 retrieve such information as follows:

14           a. Within five (5) court days of the date of  
15 discovery by the Producing Party of the inadvertent production by  
16 it, the Producing Party must give written notice to all other  
17 Parties that the Producing Party claims the material, in whole or  
18 in part, is privileged or protected material; in addition, the  
19 notice must state the nature of the privilege or protection and the  
20 basis for asserting it.

21           b. Upon receipt of such notice, any Party who  
22 has received the subject material shall promptly return all copies  
23 to the Producing Party asserting inadvertent production. In the  
24 event that only part of any material is claimed to be privileged or  
25 protected, the Producing Party shall furnish to the other Parties  
26 who have received the material a redacted copy of such material,  
27 removing only the part(s) thereof claimed to be privileged or  
28 protected, together with such written notice.

1 c. Any Party who has received the subject  
2 material may contest the claim of privilege or inadvertence by  
3 filing a motion contesting the claim within ten (10) court days of  
4 receiving the notice under subparagraph (a) above. Any such  
5 motion, however, will need to be made in strict compliance with  
6 Local Rules 37-1 and 37-2 (including the Joint Stipulation  
7 requirement). During the pendency of such motion, the receiving  
8 Party need not return all copies of the subject material to the  
9 Producing Party asserting inadvertent production; however, the  
10 receiving Party may not use or disclose the material for any  
11 purpose other than prosecution of the motion challenging the  
12 privilege or protection claim until and unless such time as the  
13 court has ruled in favor of the motion.

14 d. The provisions of the above subparagraphs  
15 are without prejudice to any other rights that any Party may have  
16 with respect to challenging or defending any claim of privilege.  
17 However, the inadvertent disclosure or production of any such  
18 privileged material shall not be deemed a waiver of that privilege,  
19 or to preclude reliance on that privilege.

20 10. MISCELLANEOUS

21 10.1. Documents designated CONFIDENTIAL or  
22 ATTORNEYS' EYES ONLY shall be maintained in the custody of outside  
23 counsel of record for the Parties except that: (a) any court  
24 reporter who transcribes testimony given in this action may  
25 maintain any such designated documents for the purpose of rendering  
26 his or her normal transcribing services; and (b) partial or  
27 complete copies of such documents may be retained by consultants  
28 entitled to see such documents under the terms of this Stipulated

1 Protective Order to the extent necessary for their study, analysis,  
2 and/or preparation of the case. A person with custody of documents  
3 designated CONFIDENTIAL or ATTORNEYS' EYES ONLY shall maintain them  
4 in a manner that limits access to those documents to only those  
5 persons entitled under this Stipulated Protective Order to examine  
6 them.

7 10.2. Unless counsel agree otherwise in writing, at  
8 the conclusion of this litigation, whether by settlement or final  
9 decision of the Court of last resort, all copies of any documents,  
10 other than attorney work product, containing designated  
11 Confidential Information produced by a Party or third party shall  
12 either be destroyed and written certification of such destruction  
13 provided to counsel for the designating Party or third party, or  
14 returned to the Party or third party producing such documents or  
15 writings. Notwithstanding the foregoing, counsel of record shall  
16 be permitted to retain a file copy of all pretrial, trial, and  
17 post-trial materials, depositions and deposition exhibits, and  
18 document databases. Such file copies must be maintained under the  
19 conditions of maintaining information as set forth in Paragraph  
20 10.1.

21 10.3. The provisions of this Stipulated Protective  
22 Order apply to all proceedings in this action, including, but not  
23 limited to, all appeals, arbitrations, mediations, settlement  
24 proceedings, and proceedings upon remand.

25 10.4. A designation of confidentiality pursuant to  
26 this Stipulated Protective Order shall be effective and shall be  
27 respected by the Parties and all persons in any way involved in  
28 these proceedings or to whose attention Confidential Information

1 shall come unless and until otherwise ordered by the Court or  
2 stipulated in writing or on the record by all Parties to this  
3 action. These obligations of confidentiality and non-disclosure  
4 shall survive the conclusion of this action unless and until  
5 otherwise ordered by the Court, or until all Parties to this action  
6 stipulate that designated Confidential Information can be  
7 disclosed.

8           10.5. No Party to this action, by designating  
9 certain information as confidential under this Stipulated  
10 Protective Order, or by acquiescing in any other Party's or third  
11 party's designation, shall be deemed to have admitted or agreed  
12 that any such designated information is, in fact, a trade secret or  
13 otherwise confidential and subject to protection hereunder.

14           10.6. The designation of confidentiality is not  
15 admissible before any trier of fact.

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10.7. The Court retains jurisdiction even after termination of this action to enforce this Stipulated Protective Order and to make such deletions from, or amendments, modifications, and additions to, the Stipulated Protective Order as the Court may from time to time deem appropriate. The Parties hereto reserve all rights to apply to the Court at any time, before or after termination of this action, for an order modifying this Stipulated Protective Order or seeking further protection against disclosure or use of claimed Confidential Information.

IT IS SO STIPULATED.

DATED: March 5, 2014 LANE POWELL PC

By: /s/ Gregory F. Wesner  
Gregory F. Wesner

G. Peter Albert, Jr.  
Adrian R. Cyhan  
ALBERTDHAND LLP

Attorneys for Plaintiff  
Aesthetic Associates, Inc., P.S.

DATED: March 5, 2014 KLEIN, O'NEIL & SINGH, LLP

By: /s/ Glen L Nuttall  
Glen L. Nuttall  
Attorney for Defendants  
Eyecare Specialists Medical Group,  
Inc., dba Atlantis Eyecare; and Ehsan  
Sadri, M.D.

IT IS SO ORDERED.

DATED: March 25, 2014

  
HONORABLE ROBERT N. BLOCK  
UNITED STATES MAGISTRATE JUDGE



## ATTACHMENT "A"

NONDISCLOSURE AGREEMENT

I, \_\_\_\_\_, do solemnly swear that I am familiar with the terms of the Stipulated Protective Order (the "Order") entered in Aesthetic Associates, Inc., P.S. v. Atlantis Eyecare, Inc., et al., U.S. Central District Court, Case No. SACV 13-cv-01693-DOC (RNBx) (the "Action"), and hereby agree to comply with and be bound by all of the terms and conditions of said Order, unless and until modified by further order of the Court in the Action. I will not disclose to any individuals, other than those specifically authorized by the Court or in the Order, any documents or information designated as Confidential Information pursuant to the Order which are disclosed to me, nor will I copy, use or disclose any documents or information designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY under the Order except for the purposes of the Action and/or as authorized by the Order. I hereby consent to the jurisdiction of the Court in the Action for purposes of enforcing this Order.

DATED: \_\_\_\_\_ Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(print)

Address: \_\_\_\_\_

Telephone  
Number: \_\_\_\_\_